

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Sheet Metal Worker C. G. Swain was arbitrarily and unjustly dismissed on February 19, 1980 and withheld from service of the Carrier until October 20, 1980;
2. That accordingly, the Carrier be ordered to:
 - A. Compensate claimant for all time lost between February 19, 1980 October 20, 1980 in addition to an amount of 12% per annum compounded annually on anniversary date of claim;
 - B. Make claimant whole for all vacation rights;
 - C. Reimburse claimant and/or his dependents for medical expenses incurred while employe was improperly held out of service;
 - D. Pay to claimants estate whatever benefits claimant has accrued with regards life insurance for all time claimant was improperly held out of service;
 - E. Pay claimant for all contractual holidays;
 - F. Pay claimant for all contractual sick pay;
 - G. Pay claimant for all jury duty and all other contractual benefits.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of the incident in question Mr. C. G. Swain, the Claimant, was a sheet metal worker in the employ of the Southern Pacific Transportation Company working the 3:30 P.M. to midnight shift at the Locomotive Heavy Maintenance Plant, Sacramento, California. On January 7, 1980 Claimant received notice

from Carrier to appear at formal hearing on January 21, 1980 for alleged violation of Rule 810 of Carrier General Rules and Regulations on December 21, 1979. As a result of this hearing Claimant was dismissed from service by Carrier on February 19, 1980. After appeals by Organization on property before proper officers Carrier offered to reinstate Claimant without prejudice on October 20, 1980(*) on leniency basis without seniority unimpaired but without compensation for time held out of service with knowledge that claim for full back compensation, with interest, would be presented before the Second Division of the National Railroad Adjustment Board.

Rule 810 reads (in pertinent part) as follows:

"Employees must report for duty at the prescribed time and place ... they must not absent themselves from their employment without proper authority."

The central and only issue in this case is whether Claimant was absent without permission from his assignment on December 21, 1979 from approximately 4:00 P.M. to 10:00 P.M. in contravention of Rule 810.

It is not the role of the Board, which serves an appellate function, to resolve issues of credibility, nor to substitute its judgment for that of Carriers in discipline cases unless the Board deems there is mitigating circumstances to warrant this action. The Board's primary role, however, is to determine if there is substantial evidence to sustain findings of guilt (See Second Division Awards 7912, 7955, 6948 et alia.). It is the position of the Board that Carrier has met the test of substantial evidence in the instant case. The Claimant left property on December 21, 1979 for five and a half to six hours (from approximately 4:00 P.M. to 10:00 P.M.). Other employees on this shift also left early on that day, with permission, since it was the last work day before the holiday season. It is only in the case of Claimant, however, that the question of appropriate permission from supervision to leave premises arose. It was the responsibility of Claimant to have made absolutely sure that supervision understood that he also intended to leave early on that day and/or to be absent a major share of his shift on that day. That a number of supervisors wasted production time looking for him around 4:00 P.M. and again around 6:00 P.M. in response to his wife's telephone call(s) (when Claimant claims he left property with permission around 4:30 P.M.) is clear indication that Claimant had not sufficiently communicated his absence from property with supervision. Supervision ultimately took the only appropriate measure it could in applying Rule 810. In view of Claimant's past record of absences from his assignment during his eleven month tenure with Carrier prior to this incident, which was introduced in hearing, the Board finds Carrier reinstatement of Claimant under conditions noted above to be magnanimous. The Board will not disturb nor alter these conditions.

(*) There is a discrepancy between ex parte submission of Employee and Carrier National Railroad Adjustment Board submission (p.5) on the exact date Claimant returned on Carrier leniency basis to duty. Organization date is October 20, 1980 and Carrier date is October 16, 1980.

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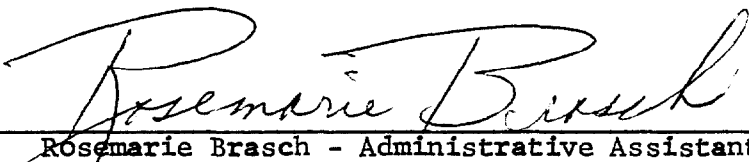
Award No. 9025
Docket No. 9141
2-SPT-SM-'82

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1982.